

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Lockheed Martin Corporation,)	
COMSAT Corporation, and)	
COMSAT Digital Teleport, Inc.,)	
Assignors)	
)	
and)	
)	
Intelsat, Ltd.,)	IB Docket No. 02-87
Intelsat (Bermuda), Ltd.,)	
Intelsat LLC, and)	
Intelsat USA License Corp.,)	
Assignees)	
)	
Applications for Assignment of Earth)	
Station and Wireless Licenses and)	
Section 214 Authorizations and Petition)	
For Declaratory Ruling)	
To: Chief, International Bureau		
Chief, Wireless Telecommunications Bureau		

PETITION FOR PARTIAL RECONSIDERATION

PanAmSat Corporation (“PanAmSat”), by its attorneys and pursuant to Section 1.106 of the Commission’s rules, hereby petitions for partial reconsideration of the Order and Authorization (the “Order”) in the above-captioned proceeding.¹ PanAmSat seeks reconsideration of the elements of the Order permitting Intelsat, post-closing, to provide public switched, private line, and occasional use video services to thin route and other non-competitive

¹ *In the Matter of Lockheed Martin Corporation, COMSAT Corporation, and COMSAT Digital Teleport, Inc., Assignors and Intelsat, Ltd., Intelsat (Bermuda), Ltd., Intelsat LLC, and Intelsat USA License Corp., Assignees Applications for Assignment of Earth Station and Wireless Licenses and Section 214 Authorizations and Petition for Declaratory Ruling, Order and Authorization, IB Docket No. 02-87 (rel. Oct. 25, 2002).*

markets on an unregulated, private carrier basis.² PanAmSat demonstrates below that permitting Intelsat to operate in this fashion would eviscerate protections that the Commission instituted when it determined that Comsat has market power.

DISCUSSION

In its Order, the Commission granted various applications associated with a transaction via which Intelsat, Ltd. (“Intelsat”) will acquire Comsat World Systems (“CWS”) and certain affiliated enterprises that are subsidiaries of Comsat Corporation (collectively, “Comsat”).³ The Commission also modified certain earth station licenses that are part of the transaction, changing them from common carrier status to dual use common/non-common carrier status.⁴ Upon consummation of the transaction, Intelsat, through various affiliated companies, will have ownership and control over the Comsat businesses that provide bundled and unbundled services employing capacity on the Intelsat system.

In the *Comsat Non-Dominance Order*,⁵ the Commission found that Comsat has market power in the provision of certain of these services. In particular, the Commission determined that Comsat is dominant in the provision of switched voice and private line services on “thin routes” between the United States and 63 countries.⁶ It also concluded that Comsat is dominant in the provision of occasional use video services in 142 non-competitive markets.⁷

The Commission found that Comsat’s market power poses a threat to competition. U.S. customers, it determined, “have little choice but to utilize

² There is “good reason” why PanAmSat did not participate in the earlier stages of this proceeding. See 47 C.F.R. § 1.106(b)(1). It was not apparent from the Public Notice in this matter, DA 02-95 (rel. Apr. 24, 2002), that in granting the above-captioned applications the Commission might eliminate dominant carrier regulation for switched voice, private line, and occasional use video services to non-competitive markets.

³ Order at ¶ 7.

⁴ Order at ¶ 29.

⁵ *Comsat Corporation, Petition Pursuant to Section 10(c) of the Communications Act of 1934, as amended, for Forbearance from Dominant Carrier Regulation and for Reclassification as a Non-Dominant Carrier*, Order and Notice of Proposed Rulemaking, File No. 60-SAT-ISP-97, FCC 98-78, 13 FCC Rcd 14083 (1988).

⁶ *Id.* at ¶ 2.

⁷ *Id.*

Comsat's switched voice and private line services for communications to and from this [thin route] market," and the lack of competition on thin routes may cause a "decrease in the number of circuits between the U.S. and this market."⁸ The Commission also found that Comsat's market power undermines the provision of competitive pricing, and may lead to higher charges for thin route customers.⁹ In light of these and other concerns, the Commission determined that it was necessary to regulate Comsat as a dominant common carrier in the provision of switched voice, private line, and occasional use video services to thin route and other non-competitive markets.¹⁰

By acquiring Comsat's fixed satellite service business, Intelsat will become heir to Comsat's market power on thin routes and other non-competitive routes. As the Commission has acknowledged, Intelsat "will have market power . . . on thin routes" after the approved transaction.¹¹ Accordingly, unless Intelsat were subject post-closing to regulation that is comparable to the dominant carrier regulation that presently applies to Comsat, Intelsat will be in a position to abuse its market power.

Under the Order, however, Intelsat will be free to provide services to non-competitive markets on an unregulated basis, without having to observe the strictures of dominant carrier regulation or its equivalent. Nothing will prevent Intelsat or one of its non-common carrier subsidiaries from offering switched, private line, or occasional use video services to non-competitive markets on an unregulated, private carrier basis. And Intelsat's conversion of Comsat's earth station licenses from common carrier to dual purpose status suggests that Intelsat has every intention of doing just that.

⁸ *Id.* at ¶ 120.

⁹ *Id.* at ¶ 126.

¹⁰ *Id.* at ¶ 132.

¹¹ Order at ¶ 19.

It is no consolation that Intelsat USA License Corp. (“IULC”) – the Intelsat affiliate that will be the assignee of Comsat’s common carrier contracts¹² and its Section 214 common carrier authorizations¹³ – “will be a common carrier subject to the alternative rate regulation previously applicable to Comsat’s provision of capacity on ... [thin] routes.”¹⁴ Most of Comsat’s fixed satellite services are provided pursuant to tariff, not contract, and upon transfer to Intelsat can be provided on an unregulated, non-common carrier basis.

As for the common carrier contracts that are to be assigned to IULC, it is PanAmSat’s understanding that these are principally or exclusively limited term contracts involving international telephone services that Comsat provides to AT&T, Sprint, and Worldcom. Nothing in the Order would prevent Intelsat from converting these services from common carriage to private carriage as the terms of the contracts expire, or from assigning the contracts from IULC to a non-common carrier subsidiary. In sum, under the Order there is a wide range of services that Intelsat – notwithstanding its market power – could provide to non-competitive markets on a non-common carrier basis.

The Commission suggests that it is sufficient for it to “monitor the performance of the thin route market to ensure that anti-competitive abuses do not occur.”¹⁵ Having already determined in the *Comsat Non-Dominance* proceeding that special regulation is needed to prevent abuses of market power, however, mere monitoring plainly is inadequate. The Commission, moreover, will not be in a position to “monitor” the thin route market if Intelsat is permitted to operate as an unregulated private carrier. Private carriers negotiate separate contracts with individual customers, and neither the Commission nor Intelsat’s competitors will know the terms of those contracts or whether they take advantage of Intelsat’s market power.

¹² *Id.* at ¶ 19.

¹³ *Id.* at ¶ 7.

¹⁴ *Id.* at ¶ 19.

¹⁵ Order at ¶ 34.

PanAmSat does not consider it essential that Intelsat be required to provide service to non-competitive markets on a common carrier basis. Although dominant carrier regulation was the logical means for holding Comsat's market power in check, because by statute Comsat had to operate as a common carrier, it is not the only means for preventing abuses. In the event the Commission does not mandate that Intelsat serve as a common carrier, however, it should develop rules for Intelsat's operations on non-competitive routes that provide protections substantially equivalent to the dominant carrier rules that presently apply to Comsat. Until such protections are in place, Intelsat should not be permitted to consummate its Comsat acquisition and serve non-competitive routes on a non-common carrier basis.

CONCLUSION

For the foregoing reasons, on reconsideration the Commission should require Intelsat to abide by dominant carrier regulation, or its equivalent, when providing switched or private line services to thin route markets, and when providing occasional use video services to non-competitive markets.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition for Partial Reconsideration was sent by first-class mail, postage prepaid, this 25th day of November, 2002, to each of the following:

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